

STATE OF MICHIGAN
BEFORE THE JUDICIAL TENURE COMMISSION

IN THE MATTER OF:

MAG. JAMES P. CONRAD
Magistrate, 37th District Court
8300 Common Road
Warren, Michigan 48093

Docket No. _____
Grievance Nos. 03-14898 and 04-14969

**DECISION AND RECOMMENDATION
FOR DISCIPLINE**

At a session of the Michigan Judicial Tenure
Commission held on April 11, 2005.

PRESENT: Hon. James C. Kingsley, Chairperson
Hon. Barry M. Grant, Vice Chairperson
Richard D. Simonson, Secretary
Carole Chiamp, Esq.
Hon. Kathleen J. McCann
Hon. Jeanne Stempien
Hon. Michael J. Talbot
Thomas J. Ryan, Esq.
Diane M. Garrison

I. INTRODUCTION

The Judicial Tenure Commission of the State of Michigan (“Commission”) files this recommendation for discipline against Magistrate James P. Conrad, a magistrate of the 37th District Court for the Cities of Warren and Center Line, Macomb County, Michigan. This action is taken pursuant to the authority of the

Commission under Article 6, §30 of the Michigan Constitution of 1963, as amended, and MCR 9.203.

The Commission, having conducted a preliminary investigation pursuant to MCR 9.207, and having received Respondent's consent to this recommendation, concludes that Respondent engaged in misconduct contrary to the judicial canons. Accordingly, the Commission recommends that the Supreme Court publicly censure Respondent, and suspend him without pay from his office as a magistrate for 180 days.

II. PROCEDURAL HISTORY

The Commission conducted a preliminary investigation of Grievance Nos. 03-14898 and 04-14969 pursuant to MCR 9.207. On July 20, 2004, it issued a 28-day letter to Respondent pursuant to MCR 9.207(C) regarding the grievances. In lieu of proceeding further, the Examiner and Respondent entered into a Settlement Agreement, a copy of which is appended to this Decision and Recommendation as Attachment A. Based on Respondent's stipulation to certain facts and conclusions of law and his consent to this recommendation, the Commission concludes that Respondent engaged in misconduct contrary to the judicial canons and Michigan Court Rules. A copy of Respondent's consent to be disciplined filed before the Commission is appended as Attachment B. A copy of Respondent's consent to be disciplined filed before the Michigan Supreme Court is appended as Attachment C.

III. FINDINGS OF FACT

Based on the Stipulations of Fact contained in Section B of the Settlement Agreement (Attachment A), the Commission adopts the stipulated facts *in toto* and incorporates them here:

1. Respondent is, and at all material times was, a magistrate of the 37th District Court for the city of Warren, Macomb County, Michigan.
2. As a magistrate, he is subject to all the duties and responsibilities imposed on him by the Michigan Supreme Court, and is subject to the standards for discipline set forth in MCR 9.104 and MCR 9.205.
3. On October 4, 2003, two police officers observed Respondent driving at the intersection of Sherwood and Iowa in Detroit.
4. The officers effectuated a traffic stop based on a suspicion that Respondent was under the influence of alcohol.
5. After taking Respondent into custody, the police administered him two breathalyzer tests.
6. The results of each test established that Respondent's blood alcohol content was .21.
7. A blood alcohol content of .21 is over the legal limit for operating a motor vehicle in Michigan, and constitutes operating a vehicle under the influence of intoxicating liquor, under MCL 257.625.

8. Respondent was the defendant in *People v James P. Conrad*, 36th District Court Case No. 521712, which was dismissed on the trial date of December 6, 2004 when the arresting officer failed to appear.

9. On April 2, 1998, Respondent was driving on Gratiot in Roseville, Michigan in the early morning hours.

10. A state police trooper effectuated a traffic stop at approximately 2:45 a.m., under a suspicion that Respondent was driving under the influence of alcohol.

11. The Macomb County Sheriff department administered Respondent two breathalyzer tests after Respondent was taken into custody.

12. The results of each test established that Respondent's blood alcohol content was .20.

13. At the time, a blood alcohol content of .10 or higher was over the legal limit for operating a motor vehicle in Michigan, and constituted operating a vehicle under the influence of intoxicating liquor, under MCL 257.625.

14. Respondent admits that his conduct in both instances was wrong, and he deeply regrets any disgrace or embarrassment he has brought to the judiciary as a result.

IV. CONCLUSIONS OF LAW

Respondent's conduct as admitted and described above constitutes:

- (a) Failure to establish, maintain, enforce and personally observe high standards of conduct so that the integrity and independence of the judiciary may be preserved, contrary to the Code of Judicial Conduct, Canon 1;
- (b) Irresponsible or improper conduct which erodes public confidence in the judiciary, in violation of the Code of Judicial Conduct, Canon 2A;
- (c) Conduct involving the appearance of impropriety, in violation of the Code of Judicial Conduct, Canon 2A;
- (d) Failure to conduct oneself at all times in a manner which would enhance the public's confidence in the integrity of the judiciary, contrary to the Code of Judicial Conduct, Canon 2B; and
- (e) Conduct which exposes the legal profession or the courts to obloquy, contempt, censure, or reproach, in violation of MCR 9.104(A)(2).

V. DISCIPLINARY ANALYSIS

A. *Brown* factors

The Michigan Supreme Court set forth the criteria for assessing proposed sanctions in *In re Brown*, 461 Mich 1291, 1292-1293 (1999). A discussion of each relevant factor follows.

(1) misconduct that is part of a pattern or practice is more serious than an isolated instance of misconduct

Respondent engaged in two acts of criminal behavior (drunk driving) separated by approximately five years. The Commission concludes that these two acts of drunk driving establish that the Respondent has a drinking problem, and they constitute a pattern of misconduct.

(2) misconduct on the bench is usually more serious than the same misconduct off the bench

Respondent's actions occurred off the bench, which is generally less serious in the context of the impact on the number of individuals affected by his conduct. However, inasmuch as this off-the-bench conduct involved violation of a criminal statute, it is a serious matter.

(3) misconduct that is prejudicial to the actual administration of justice is more serious than misconduct that is prejudicial only to the appearance of propriety

Respondent's actions were not directly prejudicial to the administration of justice, as they did not involve Respondent's duties as a judge. However, the conduct reflected actions that Respondent addresses while considering matters on the bench, particularly when he hears arraignments. Therefore, the conduct may cast a doubt in the public eye as to Respondent's ability to hear cases involving allegations of drunk driving, thus impacting the administration of justice.

- (4) misconduct that does not implicate the actual administration of justice, or its appearance of impropriety, is less serious than misconduct that does**

Respondent's actions do not implicate the actual administration of justice.

- (5) misconduct that occurs spontaneously is less serious than misconduct that is premeditated or deliberated**

Respondent's misconduct might not have been premeditated, but his decision to drive an automobile while drunk was a deliberate one.

- (6) misconduct that undermines the ability of the justice system to discover the truth of what occurred in a legal controversy, or to reach the most just result in such a case, is more serious than misconduct that merely delays such discovery**

Respondent's misconduct did not serve to undermine the ability of the justice system to discover the truth in a legal controversy.

B. Additional Factors

The Supreme Court stated that factors enumerated in *Brown* were not exclusive and recognized the Commission's ability to consider other "appropriate standards." *Id.*, at 1293. The Commission has accordingly also considered Respondent's discipline record, his reputation, and his years of experience as additional factors.

Respondent has not had prior involvement with the disciplinary system. He is a long-serving magistrate and district court administrator. However, his extensive judicial experience is an aggravating factor in evaluating his misconduct, since he is well aware of the conduct expected of a district court magistrate.

In addition, the Commission notes that Respondent has entered an alcohol treatment program at the Choices Counseling Center. The Commission applauds Respondent's recognition of the fact that he has an alcohol problem and that he is taking affirmative steps to deal with it.

The Commission further notes Judges Jakubowski and Gruenburg, both of the 37th District Court, have submitted letters in support of the Respondent. The Commission acknowledges their thoughts and recommendations, and they have been duly considered.

The Respondent himself also submitted a four-page personal statement, in accordance with Paragraph A (13) of the Settlement Agreement (Attachment A). Respondent points out that, as a magistrate, he is an "at-will" employee who serves at the pleasure of the chief judge. He has been with the court for 16 years, and has served at least five different chief judges. A copy of his statement is appended to this Decision and Recommendation as Attachment D.

Respondent expresses remorse for the disrepute his conduct brings upon the judiciary. He is involved in alcohol therapy, and assures the Commission that he will never repeat this type of conduct again.

C. Disciplinary Analysis

1. Introduction

The Respondent and the Examiner¹ have entered a Settlement Agreement (Attachment A) which sets forth the stipulated facts, and calls for a joint recommendation from them of a public censure and a 90-day suspension as a magistrate without pay. However, for the reasons set forth below, we reject that recommendation. The Respondent has agreed to a suspension of up to 180 days, and that is the period we recommend, in addition to the public censure.

2. Proportionality Analysis

In determining an appropriate sanction in this matter, the Commission is mindful of the Supreme Court's call for "proportionality" based on comparable conduct. The Supreme Court has not previously disciplined Respondent for similar or any other conduct.

(1) Michigan violations of criminal law

(a) In *In re Gilbert*, 469 Mich 1225 (2003), Judge Thomas Gilbert was suspended for 6 months without pay for smoking a marijuana cigarette at a concert, and acknowledging marijuana use

¹ Although no formal complaint has been issued, the Judicial Tenure Commission's executive director assumes the functional role of "examiner" for purposes of this proceeding, as he and the Respondent are in adversarial positions, and call upon the Commission in its adjudicatory role. See MCR 9.201(B)(F).

approximately twice per year prior to and during his first two years of service as a judge. Use of marijuana is a 90-day misdemeanor, MCL 333.7404(2)(d), and possession of marijuana is a one-year misdemeanor, MCL 333.7403(2)(d).

(b) In *In re Halloran*, 466 Mich 1219 (2002), Judge Richard Halloran was suspended for 90 days, with his consent, for indecent exposure in a public airport restroom. Although he ultimately was not charged with a crime, indecent exposure is a one-year misdemeanor, MCL 750.335a.

(c) In *In re Ford*, 469 Mich 1252 (2004), former judge Stephen Ford was given a public censure by the Supreme Court following his resignation from office. Ford acknowledged kissing a female court employee and rubbing her breasts, both of which were unwelcome by the employee. His resignation was a result of a plea agreement in a criminal proceeding, where Ford pled no contest to a reduced charge of aggravated assault, a one-year misdemeanor, MCL 750.81a. In its Decision and Recommendation, the Commission noted that Ford's actions mandated removal from office, but his resignation left public censure as the most severe penalty that could be imposed.

(2) Decisions from other jurisdictions

(a) In *In re Binkoski*, 515 SE2d 828 (W Va 1999), Respondent admitted he drove under the influence of alcohol, possessed under 15 grams of marijuana, and attempted to encourage a witness to be less than candid about Respondent's behavior. The Judicial Investigation Commission and Respondent had agreed to a suspension, drug tests, and treatment to resolve the matter. However, before the Supreme Court issued an opinion, the Respondent magistrate resigned rendering the agreement moot. The Supreme Court was left with no choice but to issue a public censure of the former magistrate, as it believed some act had to be taken to address his conduct and the resignation eliminated all other possibilities.

(b) In *In re Norblad*, 39 P3d 860 (Or. 2002), the Oregon Supreme Court suspended the respondent for 30 days without pay for driving under the influence of alcohol. The judge engaged in an extended car trip while intoxicated, had a history of misusing alcohol, had attended Alcoholics Anonymous only to satisfy the requirement of a diversion program to avoid a conviction, and admitted to drinking after the diversion program ended.

(c) A disciplinary proceeding where the facts are most similar to the present case is *In re the Matter of Lindsay Stewart, III*, Commonwealth of Kentucky Judicial Conduct Commission (2002). In Kentucky, the Judicial Conduct Commission has authority to publicly reprimand and suspend a judge with his consent. Judge Stewart was found guilty of a second offense of driving a motor vehicle under the influence of alcohol, which occurred less than three years after the first offense. The judge was suspended without pay for 60 days.

Respondent's conduct in the present matter is troublesome. Two incidents of drunk driving establish a dangerous pattern. By driving while intoxicated, Respondent endangered the lives of others as well as his own. The sanction in this matter must be consistent with sanctions imposed in other cases involving criminal conduct. The Commission notes that Respondent has acknowledged that his conduct in both instances was wrong, and has expressed his regret for any disgrace or embarrassment he has brought to the judiciary.

Halloran engaged in criminal conduct that carried a maximum 90-day period of incarceration, and the Court imposed a 90-day period of suspension without pay. *Gilbert* engaged in criminal conduct that carried a maximum one-year period of incarceration, and the Court imposed a 6-month period of suspension without pay.

Respondent is now on his second drunk driving offense, which could have carried a sentence of up to one year in jail, MCL 257.625(a)(b)(i), had he been convicted. In accordance with the proportionality principles espoused by the Michigan Supreme Court, Respondent should face a similar sanction as other judges who have violated similarly severe criminal statutes. Accordingly, the Commission recommends that Respondent be publicly censured and suspended as a magistrate without pay for a period of 180 days.

Suspending the Respondent as a magistrate without pay for 180 days, however, is complicated by the fact that Respondent also serves as the court administrator for the 37th District Court. The Commission is not recommending any action with regard to his role as court administrator, as the Commission is without jurisdiction in that arena.

Respondent has pointed out that he receives only one salary for his dual role at the 37th District Court. Respondent represents, and the Commission accepts as true, that his time at the court is regularly allocated as 80% court administrator and 20% magistrate. Counsel for Respondent has represented, and the Commission accepts as true, that due to administrative reasons the 37th District Court's fiscal office cannot reduce Respondent's salary by 20% for the appropriate period.

However, the parties have agreed, and the Commission accepts as true, that the Respondent "nets" approximately \$1,000 per month for his services as a magistrate. Accordingly, the Commission recommends that the Supreme Court's order provide

that Respondent shall repay \$1,000 of his salary to the district court for each 30-day period of his 180-day suspension as magistrate, for a total of \$6,000, or the corresponding *pro rata* amount if the period of suspension (if any) is not based on 30-day increments.

The Commission believes this arrangement will limit any negative impact on the operations of the district court, as the court will then have funds available to hire a part-time magistrate, if necessary, to fulfill those magistrate duties that Respondent otherwise would have been performed. The Commission further recommends that the Court allow Respondent to pay half the amount at the mid-point of his suspension as a magistrate, and the balance upon the completion of the suspension, in accordance with Paragraph A(3)(e) of the Settlement Agreement (Attachment A). Respondent has further acknowledged that his failure to pay back these sums within 24 hours of their being due may constitute grounds for further action by the Commission.

VI. RECOMMENDATION

It is recommended that pursuant to the consent of Respondent, the Michigan Supreme Court enter an order finding judicial misconduct as set forth above, including misconduct in office and conduct prejudicial to the administration of justice, **PUBLICLY CENSURE** Magistrate James P. Conrad of the 37th district court, and **SUSPEND HIM WITHOUT PAY FOR A PERIOD OF 180 DAYS**, as set forth above.

JUDICIAL TENURE COMMISSION

HON. JAMES C. KINGSLEY
Chairperson

HON. BARRY M. GRANT
Vice-Chairperson

RICHARD D. SIMONSON
Secretary

CAROLE CHIAMP, ESQ.

HON. KATHLEEN J. McCANN

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